

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
August 9, 2007 Session

**IN RE: ESTATE OF BERTHIE CORDELIA ROBERTS**

**Appeal from the Probate Court for Smith County**  
**No. P-1213 Charles K. Smith, Chancellor**

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**No. M2006-01950-COA-R3-CV - Filed June 11, 2008**

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The trial court held Tenn. Code Ann. § 30-20-310(b) does not provide a one-year limitations period on the TennCare Bureau's efforts to obtain reimbursement of correctly paid nursing home benefits from a beneficiary's estate pursuant to Tenn. Code Ann. § 71-5-116(c). Finding that such reimbursement is a statutory responsibility of the estate's personal representative, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Probate Court**  
**Affirmed**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which E. RILEY ANDERSON, SP. J., joined. WILLIAM B. CAIN, P.J., M.S., not participating.

David Bass, Carthage, Tennessee, for the appellant, Marie R. Wiser, Personal Representative - Estate of Berchie Cordelia Roberts, Deceased.

Robert E. Cooper, Jr., Attorney General and Reporter; Sue A. Sheldon, Senior Counsel; Ramsey Barthell Leathers; L. Vincent Williams for the appellee, State of Tennessee, Bureau of TennCare.

**OPINION**

The facts of this matter are not in dispute. Berchie Cordelia Roberts was enrolled in the TennCare program and began to receive nursing facility assistance in March of 1997 when she was 77 years old. Ms. Roberts died on March 31, 2003.

In November of 2003, the Bureau of TennCare sent a letter to Marie Wiser, the person listed as a responsible party for Mrs. Roberts, stating that under Tenn. Code Ann. § 71-5-116 and 42 U.S.C. § 1396p the State of Tennessee may have a claim for nursing home payments. The letter enclosed materials from TennCare and a form to be completed and returned. The record contains no evidence that Ms. Wiser returned the form to TennCare as requested. Thereafter, a second letter and form were sent to Ms. Wiser in January 2004 with no response.

Thereafter in November of 2004, a year after the Bureau of TennCare first contacted her, Ms. Wiser filed a petition to be appointed the personal representative for Ms. Roberts' estate which was granted. In December of 2004, the personal representative's attorney forwarded a copy of the order opening Ms. Roberts' estate to the TennCare Bureau. Thereafter, on December 22, 2004, the TennCare Bureau filed a claim seeking to recover \$163,237.63 in nursing facility costs expended by the state pursuant to Tenn. Code Ann. § 71-5-116 and various federal Medicaid rules and statutes. The Bureau was attempting to recover correctly paid benefits from the estate. There are no allegations of fraud or that Ms. Roberts was not entitled to the benefits. Accompanying the filing was a supporting affidavit and a history of payments made by TennCare on behalf of Ms. Roberts. The affidavit included a statement that the TennCare Bureau had no information that Ms. Roberts' situation precluded recovery under any applicable ground.

In January of 2005, the personal representative filed exceptions to the Bureau of TennCare's claim. The only ground that was not waived or conceded by Ms. Roberts' representative was that the Bureau had not timely filed its claim and was consequently barred by Tenn. Code Ann. § 30-2-310(b).

On June 8, 2006, the trial court held a hearing on the personal representative's exception to TennCare's claim as being untimely. The trial court found that recovery of TennCare benefits is a governmental function, that a claim to recover such payments is an attempt to recover tax dollars, and, therefore, the Bureau is not barred by limitations periods when it is making such recovery. Consequently, the trial court awarded the Bureau \$163,237.63. The estate's personal representative appealed this determination.

The sole issue on appeal is whether the Bureau is barred by the statute of limitations found in Tenn. Code Ann. § 30-2-310(b) from recovering correctly paid benefits. The appeal does not concern whether TennCare has a legitimate claim upon Ms. Roberts' estate. For purposes of this appeal, we assume that Ms. Roberts received nursing home benefits in the amount of \$163,237.63<sup>1</sup> which the Bureau of TennCare is entitled to recover if its claim is not time-barred.

## **I. STANDARD OF REVIEW**

The issues raised in this appeal involve the interpretation of a state statute. Construction of a statute is a question of law which appellate courts review *de novo*. *Gleaves v. Checker Cab Transit Corp., Inc.*, 15 S.W.3d 799, 802 (Tenn. 2000).

The primary rule of statutory construction is "to ascertain and give effect to the intention and purpose of the legislature." *LensCrafters, Inc. v. Sundquist*, 33 S.W.3d 772, 777 (Tenn. 2000); *Carson Creek Vacation Resorts, Inc. v. Department of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993); *McGee v. Best*, 106 S.W.3d 48, 64 (Tenn. Ct. App. 2002). To determine legislative intent, one must look to the natural and ordinary meaning of the language used in the statute itself. We must examine

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<sup>1</sup>The parties stipulated that the claim amount is \$163,237.63.

any provision within the context of the entire statute and in light of its over-arching purpose and the goals it serves. *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000); *Cohen v. Cohen*, 937 S.W.2d 823, 828 (Tenn. 1996); *T.R. Mills Contractors, Inc. v. WRH Enterprises, LLC*, 93 S.W.3d 861, 867 (Tenn. Ct. App. 2002). The statute should be read “without any forced or subtle construction which would extend or limit its meaning.” *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). As our Supreme Court has said, “[w]e must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning.” *Scott v. Ashland Healthcare Center, Inc.*, 49 S.W.3d 281, 286 (Tenn. 2001) (citing *State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995)).

## II. ANALYSIS

As will be discussed further, the issue before us is governed by the statutory provisions in effect during the proceedings below.

According to Ms. Roberts’ representative, Tenn. Code Ann. §§ 30-2-307(a)(1)(B) and 30-2-310 provide a one-year statute of limitations on TennCare’s recovery of the nursing facility reimbursements. Since the Bureau filed its claim for the recovery more than one year after Ms. Roberts’ death, her estate argues that the claim is barred.

Ms. Roberts’ representative relies on the statute fixing a limitations period for claims filed by the state. Claims made by the state against a decedent’s estate are governed by Tenn. Code Ann. § 30-2-310(b). The provisions of Tenn. Code Ann. § 30-2-310(a) and (b) are as follows:

(a) All claims and demands not filed with the probate court clerk, as required by the provisions of §§ 30-2-306 -- 30-2-309, or, if later, in which suit has not been brought or revived before the end of twelve (12) months from the date of death of the decedent, shall be forever barred.

(b) Notwithstanding the provisions of subsection (a), all claims and demands not filed by the state with the probate court clerk, as required by the provisions of §§ 30-2-306 -- 30-2-309, or, if later, in which suit shall not have been brought or revived before the end of twelve (12) months from the date of death of the decedent, shall be forever barred. This statute of limitations shall not apply to claims for state taxes. Such claims shall continue to be governed by § 67-1-1501.

Ms. Roberts’ estate also relies on Tenn. Code Ann. § 30-2-307(a)(1)(B) governing filing of claims against an estate which provides as follows:

(a)(1) All claims against the estate arising from a debt of the decedent shall be barred unless filed within the period prescribed in the notice published or posted in accordance with § 30-2-306(c). However:

...

(B) If a creditor receives actual notice less than sixty (60) days before the date which is twelve (12) months from the decedent's date of death or receives no notice, such creditor's claim shall be barred unless filed within twelve (12) months from the decedent's date of death.

The trial court decided that since recovery of correctly paid benefits is a governmental function, then under Tenn. Code Ann. § 30-2-310(b) the recovery should be treated like a claim for taxes under Tenn. Code Ann. § 67-1-1501.<sup>2</sup>

The Bureau of TennCare argues that these two statutes do not apply. We agree. As the statutes existed when Ms. Roberts died and the estate was probated, reimbursement of correctly paid benefits to TennCare was the obligation of the personal representative. Since Tenn. Code Ann. § 30-2-310(b) governs claims by the state and not the obligations of the personal representative, we conclude that it does not provide a statute of limitations.

The Bureau's duty to collect correctly paid nursing facility Medicaid benefits is created by Tenn. Code Ann. § 71-5-116(c) and federal law.<sup>3</sup> The version of Tenn. Code Ann. § 71-5-116(c) in effect when Ms. Roberts died and while the matter was before the probate court provides as follows:

(c) There shall be no adjustment or recovery of any payment for medical assistance correctly paid on behalf of any individual under this part, except in the case of an individual who was fifty-five (55) years of age or older when such individual received such medical assistance or services, from such individual's estate, and then only after the death of such individual's surviving spouse, if any, and only at a time when such individual has no surviving child who is under eighteen (18) years of age or who is blind or permanently and totally disabled.

(1) To facilitate and enhance compliance with this subsection (c), the department of health shall promptly notify the bureau of TennCare, in a format to be specified by the bureau, of the death of any individual fifty-five (55) years of age or older. Such notification shall include the decedent's name, date of birth, and social security number. It is the legislative intent of this subsection (c) that the bureau of TennCare strive vigorously to recoup any TennCare funds expended for a decedent after the date of death.

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<sup>2</sup>Under Tenn. Code Ann. § 67-1-1501, the claim would be considered timely since the limitations period is generally three years to collect taxes. The statute also provides several exemptions that extend the period.

<sup>3</sup>42 U.S.C. § 1396p(b) describes in detail the situation in which a state is to recover correctly paid Medicaid benefits.

(2) Before any probate estate may be closed pursuant to title 30, with respect to a decedent who, at the time of death, was enrolled in the TennCare program, the personal representative of the estate shall file with the clerk of the court exercising probate jurisdiction a release from the bureau of TennCare evidencing payment of all medical assistance benefits, premiums, or other such costs due from the estate under law, unless waived by the bureau.

Tennessee Code Annotated § 71-5-116(c) was amended in 2006 to take effect on January 1, 2007.<sup>4</sup> Also effective January 1, 2007, subsections (d) and (e) were added to Tenn. Code Ann. § 71-5-116.<sup>5</sup> The statute in effect while Ms. Roberts' estate was in probate and as amended places the

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<sup>4</sup>Effective January 1, 2007, Tenn. Code Ann. § 71-5-116(c) was amended with little revision to its substantive provisions as follows:

(1) There shall be no adjustment or recovery of any payment for medical assistance correctly paid on behalf of any recipient pursuant to this part from the recipient's estate, except in the case of a recipient who was fifty-five (55) years of age or older at the time the recipient received medical assistance or services pursuant to this part. In that case, adjustment or recovery from the recipient's estate may be pursued only after the death of the individual's surviving spouse, if any, and only at a time when the individual has no surviving child who is under eighteen (18) years of age or no surviving child, as defined in § 1614 of the Social Security Act, who is blind or permanently and totally disabled, or a child who became blind or permanently and totally disabled after reaching majority if the TennCare bureau and the personal representative agree or, in the event of a disagreement, the court, after de novo review, finds that repayment would constitute an undue hardship to the blind or disabled child.

(2) Before any probate estate may be closed pursuant to Title 30, with respect to a decedent who, at the time of death, was enrolled in the TennCare program, the personal representative of the estate shall file with the clerk of the court exercising probate jurisdiction a release from the Bureau of TennCare evidencing either:

(A) Payment of all medical assistance benefits, premiums, or other costs due from the estate under law;

(B) Waiver of the bureau's claims; or

(C) A statement from the bureau that no amount is due.

<sup>5</sup>In order to help effectuate the personal representative's duty to reimburse the TennCare Bureau for correctly paid benefits, effective January 1, 2007, the legislature elaborated further on the personal representative's obligations with regard to TennCare. The legislature required the personal representative to give a series of notices to TennCare and the court regarding a decedent who was a TennCare recipient. It also requires the personal representative to obtain a release from the bureau. Subsection (d) and (e) were added to Tenn. Code Ann. § 71-5-116 effective January 1, 2007 and provide as follows:

(d)(1) To facilitate and enhance compliance with subsection (c), the following notices shall be provided:

(A) Within thirty (30) days of receipt of notice of a person's death, the department of health shall

(continued...)

responsibility on the estate's personal representative to obtain a release from the Bureau evidencing payment, waiver or that no amount is due before the estate can be closed. Tenn. Code Ann. § 71-5-116(c)(2). There is no requirement that the personal representative perform this act in response to a claim filed by the Bureau. Furthermore, the statute specifies that the release must be from the Bureau itself, *i.e.*, no one else can represent whether the Bureau has been satisfied. Clearly, the legislature created an obligation on the personal representative to reimburse the Bureau for correctly paid benefits.

This is not to say that the Bureau has no responsibility. When no action is taken to open an estate, the Bureau may do so. *See* Tenn. Code Ann. § 30-1-301 *et seq.*; *In Re Estate of Anderson*, No. M2006-02303-COA-R3-CV, 2007 WL 4116223, at \*1 (Tenn. Code Ann. Nov. 16, 2007). The Bureau may likewise file a claim. Both the personal representative and the Bureau have a statutory duty regarding these reimbursements. In effect, the legislature has used a “belt and suspenders”

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<sup>5</sup>(...continued)

notify the bureau of TennCare, in a format to be specified by the bureau, of the death of any individual fifty-five (55) years of age or older. Each notification shall include the decedent's name, date of birth and social security number;

(B) Within sixty (60) days of the date of issuance of either letters of administration or letters testamentary, the personal representatives of decedents shall provide notice of the death of any individual age fifty-five (55) years of age or older to the bureau of TennCare, in a format to be specified by the bureau, shall state whether the decedent was a TennCare recipient and shall request a release from the bureau of TennCare pursuant to subdivision (c)(2), and an affidavit confirming notice shall be filed pursuant to § 30-2-301(b)(3);

(C) Personal representatives of decedents shall provide notice to the court concerning whether or not the decedent was a TennCare recipient pursuant to § 30-1-117; and

(D) Personal representatives of decedents shall provide the notice to creditors specified in § 30-2-306 to the bureau of TennCare, if the decedent was a TennCare recipient. If a notice to creditors is provided to the bureau, the bureau shall file a claim for recovery in accordance with the requirements of title 30, chapter 2, part 3.

(2) It is the legislative intent of subdivision (d)(1) that, after the date of death, the bureau of TennCare strive vigorously to recoup any TennCare funds expended for a decedent during the decedent's lifetime.

(e) The bureau of TennCare shall publish a form of notice to be used pursuant to subdivisions (d)(1)(A) and (B), with instructions for use of the form written in plain language. The form and instructions shall be available at the office of any clerk of court exercising probate jurisdiction, as well as available on the bureau's web site. Notice shall be provided via certified mail or in any other manner designated by the bureau.

Whether and to what extent Ms. Roberts' estate complied with these notice requirements is not relevant since these provisions were not in effect when the estate was opened. It is, however, interesting to note that the scheme would not allow an estate opened more than a year after death to defeat a TennCare Bureau claim for nursing benefits since the Bureau's obligation to file a claim is not triggered under (d)(1)(D) until a notice to creditors is sent by the personal representative.

approach. The Bureau is to pursue the claim, and the personal representative is likewise obligated to determine if reimbursement to the TennCare Bureau is appropriate. Clearly, the legislature was attempting to place responsibility for recoupment of these payments on all involved parties

Consequently, since the personal representative is obligated to show the probate court that any interest of TennCare has been addressed before the estate may be closed, regardless of whether a claim has been filed in the probate proceeding, reimbursement is clearly an obligation of the personal representative that exists whether or not TennCare has filed a claim. Since it is an obligation of the personal representative, and there is no requirement that a claim be filed, the code sections establishing statutes of limitations for claims against an estate are not applicable.

We have reviewed the companion decisions in *In re Estate of Anderson*, M2006-02303-COA-R3-CV, 2007 WL 4116223 (Tenn. Ct. App. Nov. 16, 2007) and *In re Estate of Henkel*, M2006-02641-COA-R3-CV, 2007 WL 4117791 (Tenn. Ct. App. Nov. 16, 2007), decided the same day. In *Anderson* and *Henkel*, this court concluded that Tenn. Code Ann. § 30-2-310(b) provided a one-year limitations provision for any effort by the TennCare Bureau to recover correctly paid benefits under Tenn. Code Ann. § 71-5-116(c). In both those cases, the court correctly distinguished *In re Estate of Daugherty*, 166 S.W.3d 185 (Tenn. Ct. App. 2004), on the grounds that the four month period in Tenn. Code Ann. §§ 30-2-306 and 30-2-307 does not apply to reimbursement to the TennCare Bureau since the four month period does not expressly include the state. Finding that Tenn. Code Ann. § 30-2-310 (b) specifically applies to the state, however, this court concluded in *Anderson* and *Henkel* that Tenn. Code Ann. § 30-2-310 (b) applies to the TennCare Bureau's efforts to seek reimbursement for correctly paid benefits. We must respectfully disagree with our colleagues' conclusions in *Anderson* and *Henkel* on the basis that the court in those decisions did not address Tenn. Code Ann. § 71-5-116(c), which places the responsibility to pay such TennCare reimbursement on the personal representative.<sup>6</sup>

The trial court found that since recovering correctly paid nursing facility Medicaid benefits is a governmental function, the action is akin to tax collection and the Bureau is not subject to Tenn. Code Ann. § 30-2-310 or Tenn. Code Ann. § 30-2-307(a)(1)(B). While we believe that rationale is applicable after the amendments effective January 1, 2007 to any claim filed by the state,<sup>7</sup> we do not

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<sup>6</sup>The *Anderson* and *Henkel* cases have been followed in another opinion. See *In re Estate of Hare*, M2007-00563-COA-R3-CV, 2007 WL 4459934 (Tenn. Ct. App. Dec. 19, 2007).

<sup>7</sup>The amendment to Tenn. Code Ann. § 30-2-317(a)(3) added the language in bold effective January 1, 2007:

(a) All claims or demands against the estate of any deceased person shall be divided into the following classifications, which shall have priority in the order shown:

...

(3) Third: taxes and assessments imposed by the federal or any state government or subdivision thereof, **including claims by the bureau of TennCare pursuant to Tenn. Code Ann. § 71-5-116;** and

(continued...)

agree with its application prior to the amendment. Nonetheless, the trial court reached the right result.

The trial court is affirmed for the reasons stated herein. Cost are assessed against the Estate of Berchie Cordelia Roberts for which execution may issue if necessary.

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PATRICIA J. COTTRELL, JUDGE

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<sup>7</sup>(...continued)

Since claims by the TennCare Bureau under Tenn. Code Ann. § 71-5-116 are classified by statute as “taxes and assessments,” then pursuant to Tenn. Code Ann. § 30-2-310(b), effective January 1, 2007, such claims are governed by Tenn. Code Ann. § 67-1-1501. Clearly, Tenn. Code Ann. § 67-1-1501 sets a limitation for the Bureau’s claims in the future. Remaining unaddressed is the consequence of failure by a personal representative to fulfill its obligations. In this case we simply decide that Tenn. Code Ann. § 30-2-310(b) does not create a limitations period on the obligation of the personal representative since Tenn. Code Ann. § 30-2-310(b) governs only claims by the state.